

ROYAL INSTITUTION OF CHARTERED SURVEYORS

Disciplinary Panel Hearing by way of written representations

Case of

Michael Durham [0042674]
Suffolk, IP30

On

Thursday 17 March 2016

Via telephone conference

Panel

Helen Riley (Member)

Chris Boothman (Lay Member)

CHARGES HEARD

The Panel considered the following:

Mr Durham may be liable to disciplinary action under RICS Bye-Law 5.2.2(d) by reason of having been convicted by Willesden Magistrates Court on 19 May 2015 for offences contrary to sections 194(1)(a) and (2) of the Town and Country Planning Act 1990 and section 3 and 6 of the Forgery and Counterfeiting Act 1981.

Background

Mr Durham has asked for his case to be heard by way of written representations. The Panel has noted that Mr Durham confirmed this in his email of 3 February 2016 (p 49 of bundle) and in his email of 10 February 2016 (added to bundle at page 53) when he confirmed by email receipt of the RICS's letter dated 10 February 2016 (pages 51-52) on this matter. Accordingly the Panel finds it appropriate to proceed.

The Panel has considered the case summary and bundle of documents prepared by RICS, which includes Mr Durham's statement dated 20 July 2015, and Mr Durham's email dated 3 March 2016. This email is added to the bundle and numbered pages 54 -57.

DETERMINATION

Findings of Fact

Mr Durham became a member of RICS in 1971. On 9 October 2015 his membership was temporarily suspended for one year by a Disciplinary Panel pending enquiry by the RICS into the matter being considered today.

On 28 May 2015 the RICS media team identified a “tweet” concerning news articles in the public domain concerning Mr Durham having been convicted of four criminal offences by Willesden Magistrates’ Court. A subsequent search found the news articles at pages 2-7 of the bundle.

RICS obtained a copy of the relevant Memorandum of Conviction (page 17 of the bundle).

This confirmed that Mr Durham had been convicted on 19 May 2015 of two offences under the Town and Country Planning Act 1990 (s194) and two offences under the Forgery and Counterfeiting Act 1981 (s 3 and 6). Mr Durham was fined as a result the total sum of £3,000, with a victim surcharge of £120 and costs of £2,286.

Under section 194 of the Town and Country Planning Act, it makes it an offence for any person to knowingly or recklessly make a statement which is false or misleading in a material particular for the purpose of procuring a particular decision on an application for the issue of a certificate of lawfulness of the existing use of premises. Section 3 of the Forgery and Counterfeiting Act makes it an offence to use an instrument which a person knows or believes to be false with the intention of inducing somebody to accept it as genuine. These offences concerned the submission of false tenancy agreements in support of an application for planning permission on which Mr Durham was advising a client. The RICS bundle includes information supplied by the Court authorities, Brent Council, as well as a number of documents, including a written statement, produced to RICS by Mr Durham.

RICS say the conviction is a matter of fact in these proceedings. Mr Durham entered guilty pleas and, in doing so, RICS say Mr Durham accepted that he knew the documents were false and intended to mislead the Council into granting a certificate of lawfulness. Mr Durham had had the benefit of legal advice before doing so.

In his statement of 20 July 2015, Mr Durham says he was advised by his lawyers to plead guilty to submitting the documents “unwittingly” to ensure the matter would be dealt with by the Magistrates Court and to avoid the matter going to the Crown Court. However there is no available supporting evidence to back up this claim. The letter from Mr Durham's solicitors to the Court dated 12 May 2015, while mentioning other mitigation, makes no mention of Mr Durham submitting the documents unwittingly. Apart from his statement to RICS there is no evidence that Mr Durham had done anything other than accept his lawyer’s advice to plead guilty on the facts alleged. Further, if he had submitted the documents unwittingly, it would have been open to him to appeal against the

Magistrates Court decision and/or commence proceedings against his solicitors for negligence. Against this background the Panel concluded that Mr Durham pleaded guilty to the offences knowing the relevant documents to be false at the time they were submitted to Brent Council.

RICS says this falls within the provisions of byelaw 5.2.2(d) and gives rise to a liability for disciplinary action.

Panel's Decision

The Panel found the facts proved by virtue of the conviction. The Panel finds that the matters resulting in the conviction are sufficiently serious so as to render Mr Durham liable to disciplinary action under Bye Law 5.2.2(d).

Penalties

Bye-law 5.4.2 provides the power to impose one or more disciplinary penalties specified in Bye-law 5.4.3 if, after due enquiry, a member is found to have committed Bye-law 5.2.2 (d). The Panel noted that disciplinary action is not intended to be punitive though it may have that effect. The purpose of imposing a penalty/sanction is to declare and uphold proper standards of professional conduct, to uphold the reputation of the profession, and to protect the public. It has borne in mind the need to act proportionately.

The Panel formed the view that, given the seriousness of the behaviour that led to the conviction, a penalty was necessary in order to protect the public.

This conviction has had widespread publicity which adversely impacts the reputation of the RICS and its members. Mr Durham was providing a service in his professional capacity as a chartered surveyor. Being convicted of criminal offences involving dishonesty demonstrates a serious failure in upholding professional standards and risks seriously damaging public confidence.

The Panel have noted that Mr Durham, in his email of 3 March 2016 (page 55-56), has said he is extremely sorry for any damage caused to the RICS for his conviction. Whilst he says he regrets not notifying the RICS of this conviction, the Panel view this as an aggravating factor. He says he will not make the same mistake in the future. In Mr Durham's statement of 20 July 2015, he says that he pleaded guilty to avoid the matter being passed to the Crown Court (p 32). However, the Panel treat the guilty plea simply as a guilty plea.

The Panel note Mr Durham is described as “hitherto a man of good character” by his solicitors (page 41). Mr Durham mentions he is (still) suffering ill health after the Magistrate Court hearing but he is not specific about this and provides no supporting medical evidence.

The Panel considered the full range of disciplinary penalties available, starting at the lowest, with due regard to proportionality and protection of the public interest and the reputation of RICS.

The Panel decided that neither a Caution nor a Reprimand was appropriate given the nature and gravity of the conviction and Mr Durham’s considerable experience as a Chartered Surveyor. The Panel did not consider Undertakings/Conditions or a Fine to be appropriate or feasible in this case.

The Panel has borne in mind that under paragraph 22 of RICS’ Sanctions Policy, a conviction for a serious criminal offence is listed as an example of conduct for which the likely sanction, in the absence of extenuating circumstances, is expulsion. Also under paragraph 22, dishonesty or lack of integrity is given as an instance likely to result in expulsion.

Therefore the Panel concludes that the only appropriate penalty is for Mr Durham to be expelled from membership of the RICS and accordingly orders that he be expelled.

In view of this and in accordance with Rule 20 of the Disciplinary Registration and Appeal Panel Rules 2009, the Panel concludes the interim measures order.

Determination on Publication and Costs

Publication

The Panel directs publication in accordance with Supplement 3 to the Sanctions policy.

Costs

The Panel also orders that Mr Durham pay the costs of the RICS in this case of £600.

Appeal Period

Mr Durham has 28 days to appeal this decision in accordance with Rule 59 of the Disciplinary, Registration and Appeal Panel Rules.

In accordance with Rule 60 of the Disciplinary, Registration and Appeal Panel Rules, the Honorary Secretary of RICS has 28 days to require a review of this Decision.